

## **ELDER AFFAIRS DEPARTMENT(321)**

### **Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 231.14, the Elder Affairs Department hereby rescinds Chapter 9, “Resident Advocate Committees,” and adopts the following new chapter with the same name in its place.

The new chapter changes the processes for membership on resident advocate committees, requires committee members to be trained on a regular basis, and removes language that has not been utilized for several years and includes a severability clause.

Notice of Intended Action was published in the Iowa Administrative Bulletin on May 7, 2008, as ARC 6789B. The public comment period on this notice ended May 27, 2008. The new chapter is identical to that published under Notice.

The Commission adopted these amendments during an emergency meeting on July 2, 2008. This meeting was held due to the Commission’s premature approval of this chapter at their regularly scheduled meeting on June 10, 2008. This date was one day earlier than permitted under Iowa Code section 17A.4(1)”a”. The commission has since reconvened and adopted the new chapter on the above date.

The Commission finds that the new chapter confers a benefit on the public by not delaying the effective date of the chapter and allowing the new revised provisions for appointment of resident advocate committee members to begin on the effective date of the earlier incorrect filing. Therefore, the new chapter is filed pursuant to Iowa Code section 17A.5(2)”b”(2), and the normal effective date of these amendments is waived.

The new chapter shall become effective August 6, 2008 and is intended to implement Iowa Code section 231.44.

The following new chapter is adopted:

## CHAPTER 9 RESIDENT ADVOCATE COMMITTEES

**321—9.1(231) Definitions.** Words and phrases used in this chapter are as defined in 321 IAC 1 unless the context indicates otherwise. The following definitions also apply to this chapter.

“Committee” means a resident advocate committee as provided in Iowa Code sections 135C.25 and 231.44.

“Relatives” means any one of the following: father, mother, son, daughter, brother, sister, aunt, uncle, first cousin, nephew, niece, wife, husband, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepparent, stepbrother, stepchild, stepsister, half sister, half brother, grandparent or grandchild.

“Resident’s advocate/ombudsman” means the state long-term care resident’s advocate as provided in Iowa Code section 231.42.

### **321—9.2(231) Resident advocate committees established.**

**9.2(1)** Committee for each licensed facility. Pursuant to Iowa Code sections 135C.25 and 231.41 through 231.44, a resident advocate committee shall be established for each licensed health care facility as defined in Iowa Code section 135C.1 and shall operate within the scope of the Code of Iowa and this chapter.

**9.2(2)** Committee membership. The committee shall consist of a number of members sufficient to meet the needs of the residents. The minimum number of members in facilities licensed to serve fewer than 15 residents is one; the minimum number of members in facilities licensed to serve 15 or more residents is two.

**9.2(3)** Committee member residence. Committee members shall reside within the service area of the facility.

**321—9.3(231) Application for committee membership.** An interested individual may apply to the department for membership. Individuals, AAAs and other organizations are encouraged to recommend potential volunteers for committee membership to the department pursuant to Iowa Code section 135C.25.

**9.3(1)** Application forms. Application forms may be obtained from the department at the address listed in 321 IAC 2.3(2), from the department Web site or from organizations designated by the department.

**9.3(2)** Submission of forms. Each applicant shall complete and submit an application for membership to the department at the address in 321 IAC 2.3(2).

**9.3(3)** Membership restriction. Applications shall be approved only when written consent is submitted by both the resident's advocate/ombudsman and the administrator of the facility if an applicant:

- a. Has an ownership interest in the facility; or
- b. Is employed by the facility or a competing facility; or
- c. Has been employed by the facility within the past three years; or
- d. Is related to an employee, board member, or licensee of the facility; or
- e. Is a public employee involved with the sponsoring or placement of residents in the facility; or
- f. Is an administrator of a long-term care facility; or
- g. Is a professional consultant to the facility.

**9.3(4)** Waiver of membership restriction. When the resident's advocate/ombudsman or the facility administrator does not approve an application, the membership restriction for relatives in paragraph 9.3(3)“d” may be waived by the director if sufficient evidence can be presented showing that the membership will not cause a conflict of interest.

**321—9.4(231) Appointment to resident advocate committees.**

**9.4(1)** Notification. Acceptance of an application shall be confirmed by letter within 15 business days of receipt of the application by the director or designee. Each facility shall be notified of final committee appointments.

**9.4(2)** Orientation. All applicants shall complete the required orientation prior to final appointment and the beginning of volunteer duties.

**321—9.5(231) Objection to and termination of appointments to resident advocate committees.**

**9.5(1)** Filing an objection. A facility administrator who objects to a particular member's participation on the committee for that facility may file a written objection with the director. The objection shall be investigated as a confidential complaint, and all parties shall be notified of the director's decision.

**9.5(2)** Reasons for termination. A committee member's appointment may be terminated by the director for any of the following reasons:

- a. Falsification of information on the application form;
- b. Acting as a member prior to appointment;
- c. Attending less than one-half of the meetings convened each year by the resident advocate committee chairperson;
- d. Conviction of an illegal activity;
- e. Breaching confidentiality;
- f. Failure to attend approved training for two consecutive years; and
- g. Actions which are found by the director to violate these rules or the intent of the state long-term care ombudsman program.

**9.5(3)** Notification of termination. The director shall notify, in writing, the committee chairperson and the facility of the termination of a resident advocate committee member's appointment.

**321—9.6(231) Request for reconsideration of appointment or termination of appointment.**

**9.6(1)** Request. A request for reconsideration concerning appointment, nonappointment or termination shall be made in writing to the department within 30 days of the written notice of the director's action.

**9.6(2)** Decision. The director shall consider the request within 30 days of receipt and notify all parties of the decision.

**321—9.7(231) Resident advocate committee structure and procedures.**

**9.7(1)** Structure. Every committee shall have a chairperson and secretary selected by the membership. The chairperson shall coordinate the activities of the committee. The secretary shall record minutes of each meeting and prepare reports as necessary. The chairperson and secretary shall be elected to a term of not more than three years.

**9.7(2)** Resident visits. Committee members shall spend at least three hours each month making visits to observe residents at different times of the day and in differing circumstances and shall document the visits.

**9.7(3)** Meetings. The committee shall meet at least quarterly and on other occasions as required to accomplish its responsibilities. The chairperson shall notify all members of the time and place of each meeting at least two weeks in advance.

a. The administrator and staff of the facility shall not attend committee meetings except upon request of the committee.

b. Confidential information shall not be discussed during meetings if anyone other than committee members is present.

c. Reports of each visit shall be discussed with the committee as appropriate.

d. The secretary shall complete the meeting minutes summary form designated by the department. Copies of the form shall be submitted to the facility administrator and to the office of the resident's advocate/ombudsman within ten business days following the meeting.

e. The forms shall be retained by the facility for a period of at least two years and shall be available to the department of inspections and appeals and the department of elder affairs upon request.

**321—9.8(231) Duties of the committee.** Committee members shall, at a minimum, participate in one training session approved by the department each calendar year. Committee members shall represent and advocate for the rights of residents of the facility. As a part of this advocacy, committee members shall investigate complaints and grievances according to the procedures established in rule 321—9.11(231).

**321—9.9(231) Committee access and assistance.**

**9.9(1) Access.** The committee shall have access to facilities, persons and records as provided in the Act, and Iowa Code section 231.42 and this chapter.

**9.9(2) Assistance to the committee.** The committee may request information, advice and counsel from the facility administrator or the department. When, in the performance of duties, a committee member contacts anyone on behalf of residents, the committee member shall clearly identify himself or herself and shall clearly state the purpose of and justification for such contact.

**321—9.10(231) Confidentiality.**

**9.10(1) Access restriction.** Resident advocate committee members shall not have access to the following records unless access is granted by the resident or the resident's responsible party, such as a guardian or conservator, and the resident's advocate/ombudsman:

a. Medical, financial or personal records of residents; or

b. Records of the social services department of the facility.

**9.10(2)** Nondisclosure of information. The committee shall not disclose information concerning residents or the operation of a facility in a manner that will identify individuals or the facility, except to the state long-term care ombudsman program or as requested by the department of inspections and appeals in the investigation of a facility.

**321—9.11(231) Committee response to complaints and grievances.** Throughout the investigation of all complaints and grievances, the committee shall maintain objectivity and act as advocates for residents without being adversaries of the facility.

**9.11(1)** In all investigations, the committee shall:

a. Maintain the dignity and privacy of residents, as shall all other persons involved in a complaint or grievance investigation.

b. Using the procedures appropriate to the source of the complaint, receive and investigate complaints or grievances from an individual or the department regarding the rights and welfare of residents.

c. Seek to resolve the complaint or grievance and, if feasible, prevent unnecessary regulatory action against a facility. However, the committee shall not prevent or dissuade regulatory action when necessary to protect or achieve the rights of residents.

d. Solicit input from the complainant and the resident regarding the choices for action to be pursued by the committee.

**9.11(2)** Action upon receipt of a complaint or grievance. The committee may contact the facility administrator to discuss the allegations only if doing so does not violate confidentiality.

a. Information that identifies the complainant or resident shall be confidential unless the complainant or resident has given permission to the committee to disclose this information. This permission shall be documented in a committee member's notes.

b. The investigating committee member shall make at least one unannounced visit to the facility.

c. The committee shall, to the extent possible, ascertain the facts of the situation through personal observation of conditions and activities in the facility and by talking with all persons who may have knowledge regarding the matter under investigation.

d. If a resolution cannot be reached, the committee may contact the resident's advocate/ombudsman for follow-up action as appropriate.

e. Committee members shall keep the complainant informed of progress in the investigation.

**321—9.12(231) Complaints referred from the department of inspections and appeals.** The following procedures shall apply to complaints received or initiated by the department of inspections and appeals and referred to the department of elder affairs for investigation by a resident advocate committee.

**9.12(1) Confidentiality.** Information that may identify the complainant or resident shall be confidential.

**9.12(2) Notification.** Depending on the circumstances in each instance, the state long-term care ombudsman program shall provide adequate verbal information within three days to a member of the appropriate resident advocate committee so that an investigation may proceed. Written notification shall be provided within seven days.

**9.12(3) Investigation.** Investigation of the complaint or grievance shall be conducted in accordance with rule 321— 9.11(231).

**321—9.13(231) Accountability measures.**

**9.13(1)** The committee shall use a standardized form developed by the department, to be completed by the secretary, to specify issues and concerns identified by residents, the facility's response, and whether the matter has been resolved.

**9.13(2)** An issue or concern shall be designated as resolved when the committee and the facility agree it has been resolved. If there are unresolved issues and the facility disagrees with the committee's determination regarding the resolution of an issue or concern, the facility may request a review by the resident's advocate/ombudsman by submitting a written request within 20 calendar days of receipt of the form described in this rule.

**9.13(3)** Upon receipt of a request for review, the resident's advocate/ombudsman shall contact the facility administrator and the chairperson of the resident advocate committee to discuss the request. The resident's advocate/ombudsman has the discretion to:

- a. Uphold the committee's determination,
- b. Designate the issue or concern as resolved, or
- c. Redefine the issue or concern as a means to negotiate a compromise.

**9.13(4)** The decision of the resident's advocate/ombudsman shall be made within 20 calendar days of the receipt of a request for review. Additional time may be allotted by agreement of the resident advocate committee and the facility administrator.

**9.13(5)** An aggrieved party has 30 calendar days from the receipt of written notice of the decision of the resident's advocate/ombudsman to request a hearing pursuant to 321 IAC 13.

**9.13(6)** All appeals and judicial review shall be conducted pursuant to 321 IAC 13.

**321—9.14(231) Reporting statistics.** The office of the resident's advocate/ombudsman shall record the number of issues and concerns listed on the forms submitted by the committees and the number resolved. Each year, the office of the resident's advocate/ombudsman shall calculate the percentage of issues and concerns that are resolved, based on the total number of issues and concerns identified between January 1 and December 31 of the preceding year. Prior to May 1 of each year, the office of the resident's advocate/ombudsman shall report the resolution rate of each facility to the department of human services.

**321—9.15(231) Severability.** Should any rule, subrule, paragraph, phrase, sentence or clause of this chapter be declared invalid or unconstitutional for any reason, the remainder of this chapter shall not be affected.

These rules are intended to implement Iowa Code section 231.44.

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Director, Department of Elder Affairs

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Date